



Tax News

January 2011

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Child and Dependent Care Expenses Credit - Important Reminders

To assist your clients and avoid processing delays, make sure they understand that ALL eight of the following qualifications must be met:

1. Married or registered domestic partners (RDP) **must** file a joint return unless they meet the three requirements below:
 - They lived apart from their spouse/RDP at all times during the last six months of 2010.
 - The qualifying person(s) lived in their home more than half of 2010.
 - They provided over half the cost of keeping up their home.
2. Care must be provided **within** California for one or more qualifying persons. See form FTB 3806, Section D, Qualifying Person Defined.
3. The taxpayer paid for care for the qualifying child or qualifying person while he/she (and the spouse/RDP) worked or looked for work. However, if you did not find a job, and have no earned income, you do not qualify for the credit. If his/her spouse/RDP was a full time student or disabled see form FTB 3506 instructions for lines 5 and 20.
4. The taxpayer (and his/her spouse/RDP) must have **earned** income during the year: wages, salary, tips, active duty pay, or net earnings from self-employment income. Earned income **does not** include pensions, social security payments, worker's compensation, interest, dividends, capital gains, unemployment compensation, or public assistance.
5. The taxpayer and the qualifying person(s) must have lived in the same home for more than half the year. If the qualifying person lived with more than one person during the year, see the tie-breaker rules on page 1 of the form FTB 3506 instructions. For parents who are divorced, separated or never-married or whose RDP terminated and both parents paid for child care, see the rules on pages 1 and 2 of the form FTB 3506 instructions.
6. The person who provided the care cannot be the taxpayer's spouse/RDP, the parent of the qualifying child, or a person for whom the taxpayer can claim a dependent exemption.
7. All of the required information about the care provider(s) must be provided on form FTB 3506, including a complete physical address where the care was provided - street number, city, state, and zip code. A post office box is not acceptable.
Incomplete information could delay or disallow the credit.
8. The taxpayer's federal adjusted income must be \$100,000 or less.

We will ask for proof of payment. Keeping accurate records will help meet the burden of proof. We may contact the care provider to verify the information provided.

Additionally, this credit is to offset qualified expenses, which are the amounts paid for the care of your qualifying person while you worked or looked for work. Qualified expenses **do not include** the amount paid for education (school tuition at the kindergarten level and above), expenses paid by or reimbursed through a subsidy program, overnight camp expenses, child support payments, or payments made to the taxpayer's child who is under age 19 at the end of the year.

Final Filing Date - Monday, April 18

Since Friday, April 15 is a legal holiday in Washington DC (Emancipation Day), the Internal Revenue Service (IRS) announced that taxpayers nationwide have until the following business day, Monday, April 18, to timely file returns and pay taxes. California will accept returns and payments as timely if received on April 18.

EITC Awareness Day 2011

Millions of Californians may qualify for the federal Earned Income Tax Credit (EITC) and not even know it. The EITC can provide a big financial boost to working folks hit hard by these economic times. It can increase federal income tax refunds by up to \$5,666, but taxpayers must file and claim the credit to receive it.

To increase awareness about this important, potentially life-changing [tax credit](#) by generating extensive nationwide print, electronic, and social media coverage and, we will partner with the IRS and other local organizations on January 28, 2011, for the fifth annual EITC Awareness Day.

This is where you come in. You can be part of this important initiative by issuing a news release, sending a letter to the editor of your local paper, appearing on radio talk programs, conducting news interviews, tweeting, blogging, etc. on January 28th. If you are interested in participating, the IRS can help you connect with like-minded organizations in your area.

For more information, go to www.eitc.irs.gov/ptoolkit/awarenessday/.

Why We Send Your Power of Attorney (POA) Back to You

One of the most important documents taxpayers send to us is a form FTB 3520. This form lets us know that we can discuss taxpayers' account or return information with their representative, and that the representative may perform certain acts on their behalf. We are prohibited from disclosing confidential information to anyone other than the taxpayer or the authorized representative.

In some cases, we require a POA form to be on file for a representative to represent a taxpayer in FTB matters, to receive information, execute waivers, and deal with other matters related to the specified tax year or income period. When a taxpayer authorizes a representative only to receive confidential taxpayer information, but not to act on their behalf, the limited authority is indicated on the POA.

We process approximately 5,000 to 7,000 POAs a month, but, we return approximately 30 percent because they are incomplete or incorrect. Unfortunately, we **do not** have the authority to correct or "perfect" a POA, and here are the most common reasons we send the POA back:

- Taxpayer information on form FTB 3520, Power of Attorney, does not match the information on our system. (i.e. taxpayer name, social security number, corporation number)
- More than one entity number is listed on form FTB 3520 and the numbers do not match the information on our system.
- Information on form FTB 3520 is incomplete or illegible. We will highlight area(s) for missing information, or information we are unable to read.
- Information on form FTB 3520 has been altered (i.e. information has been crossed out) or taxpayer's name does not match taxpayer's signature.
- We received a durable power of attorney without the form FTB 3520 attached.
- A form other than a form FTB 3520 was filed, and it does not indicate it is for FTB.
- Form FTB 3520, line 8, Retaining or revoking prior power of attorney: You checked the box to keep a previous power of attorney in effect, but did not attach a copy of form FTB 3520 you wished to retain.

- Form FTB 3520, line 9, Signatures authorizing a power of attorney: The fiduciary box is checked, and there is no title (executor, administrator, or trustee) entered on the title line.
 - The business entity did not enter a representative on the form FTB 3520 title line.
 - The name of a **specific** representative's is not given. For example: George Smith instead of ABC Accounting LLP. We do not accept the declaration if the name is a company or an organization.
- Used form FTB 3520 to receive a deceased taxpayer's refund check instead of using IRS 1310, Statement of Person Claiming Refund Due a Deceased Taxpayer.
- Form FTB 3520 is cut off and Lines 4 and 5 are not visible.

New PAO Fax Number

916.843.5440

Please use the new number now. As of February 1, 2011, the old fax numbers will be disconnected. In the event that a fax is inadvertently sent a POA to the old fax numbers during the filing season, we will notify you to use the new fax numbers.

For more information about the California POA, go to ftb.ca.gov and search for **POA**.

Tax Benefits for Employers

Under the federal Hiring Incentives to Restore Employment (HIRE) Act, two new federal tax benefits are available to employers who hired certain previously unemployed workers.

The first, referred to as the payroll tax exemption, provides employers with an exemption from the employer's 6.2 percent share **of social security tax** on wages paid to qualifying employees, effective for wages paid from **March 19, 2010 through December 31, 2010**.

An employer may not claim both the payroll tax exemption and the Work Opportunity Tax Credit (WOTC) for the same employee.

The second is the new hire retention credit. This law provides that for each qualified employee retained for at least 52 consecutive weeks, businesses are eligible for a general business tax credit of 6.2 percent of wages paid over the 52 week period, up to a maximum credit of \$1,000.

The employer is not required to reduce salary expenses by the amount of the new hire retention credit. No carryback is allowed, but this credit may be carried forward for 20 years. The WOTC and the new hire retention credit can both be claimed for the same employee.

Since there is no reduction to employer's federal wage deduction, no adjustments are necessary for California tax purposes. In addition, these new federal tax benefits do not affect the state's new jobs credit, form FTB 3527 or the enterprise zone credits, form FTB 3805Z.

California does not conform to either of these new federal tax benefits; however, we do have several hiring credits.

New Jobs Credit

A credit of up to \$3,000 is available for each additional full-time employee hired by small businesses with 20 or fewer employees.

State funding for this credit is limited to \$400 million. It is being issued on a first-come, first-served basis. To date, only about 10 percent of this credit has been issued.

Enterprise Zone Credits

Both individuals and business entities that conduct business activities within the boundaries of any of California's designated enterprise zones (EZ) may qualify for special tax incentives. Three new EZs were designated this year in Anaheim, Harbor Gateway, and Santa Clarita. These designations are effective starting in 2011.

Key EZ State Tax Incentives:

- **Hiring credit** is allowed to qualified employers who hire qualified employees and pay them qualified wages.
- **Sales or use tax credit** is equal to the sales or use tax paid or incurred in connection with the purchase of qualified property. There is a \$20 million purchase limitation for corporations and \$1 million for individuals and partnerships.
- **Business expense deduction** of up to 40 percent of eligible cost of qualified property in the year it is placed in service may be taken instead of capitalizing the expense.
- **Net interest deduction** allows lenders to deduct from their taxable income the amount of "net interest" they earn from loans made to a trade or business solely located in an EZ.

For more information, go to ftb.ca.gov and search for **enterprise zones**.

Things to Remember when Registering for Access Your Account

[Access Your Account](#) is the easy new way to view your client's MyFTB Account. Via one-time registration, you will create your Tax Professional account. Once you have created your account you login and use your client's secrets (information from a previous year's tax return) to view their MyFTB Account. You will no longer need to retrieve and use your client's Customer Service Number.

More than 21,000 customers, including 5,000 tax professionals, have registered since the November launch date.

We have also heard from customers who are experiencing problems during registration. Here are some things to remember about registration:

Username, password, Security Questions and answers

- Select your own username and password – make sure you remember them.
- Select three Security Questions and answers -make sure you remember them.

- We recommend that you write them down and keep them in a secure place.

Confirmation email

- You have to click on the link in the email we send you within 72 hours of registering – if you do not do this; your account is not activated.
- Some email providers can take several hours to deliver new emails to your inbox.
- If you do not see the confirmation email in your inbox, check your spam folder.

Preparer Tax Identification Number (Tax Professional Identification Number)

- If you have recently applied for a Preparer Tax Identification Number (PTIN) from the IRS, you will not be able to use your PTIN to register until late January 2011 as we receive PTIN information from the IRS quarterly.
- If you have recently applied for a PTIN, you can register with us now if you have an Electronic Filer Identification Number (EFIN), CTEC number, or California Board of Accountancy CPA number.
- The Board of Accountancy only provides us with licensing information for CPAs who were issued their license in California. If you are a CPA in another state you will not be able to use your CPA number when registering. You will need to use a different number such as your PTIN or EFIN.
- Verify the PTIN, EFIN, CPA or CTEC number you enter during registration is correct. We found that the practitioners who experienced difficulty during registration entered the wrong professional identification number.

Hardware and Browsers we support

- Handheld devices
 - We currently do not support mobile operating systems for the registration process – mobile phones, iPads, and other tablets accessing the internet using iOS, Android, or Windows Phone 7 are not supported.
- Older browser versions
 - Make sure your browsers and operating systems are current. See our [Browsers We Support](#) page for further information.
 - If your browser is not compatible with our system you will need to upgrade your current version or download a different browser.

Ask the Advocate



Bill of Rights Hearing Summarized

On December 2, 2010, the Franchise Tax Board held its annual Taxpayer Bill of Rights Hearing along with a regularly scheduled Board meeting. Practitioners and taxpayers were invited to submit issues in writing and could also request time to address the Board during the meeting to present their issue. Here are a few of the items presented to the Board.

Conformity – This continues to be an issue for California taxpayers. This year, the Board heard recommendations to review going back to a California stand-alone return.

Litigation- A taxpayer requested that the Board consider payment of taxes as a prerequisite to use of the California court system.

Standard Deduction - A taxpayer recommended an increase in the standard deduction for older taxpayer with an increase in the tax rate to offset loss.

Power of Attorney – Practitioners recommended that all correspondence from the FTB be copied to the person with the Power of Attorney.

These are just a few of the issues we heard this year. As The Taxpayers' Rights Advocate, my goal is to review and address each one of these issues as well as all of the issues I received in writing, and respond by February 1, 2011. My responses will be posted on our [website](#).

Steve Sims, EA
Taxpayers' Rights Advocate

Follow me on Twitter at twitter.com/FTBAdvocate.

Our Calendar

As part of education and outreach to our tax professional community, we participate in many different presentations and fairs. We provided this calendar to show the events we are attending.

| Education and Outreach | | | |
|----------------------------------|--|---|----------------|
| | | | |
| January Events | | | |
| Date | Event Association | Subject Matter | Location |
| Jan 4 | CA Certified Public Accountants | California tax update | Woodland Hills |
| Jan 5 | San Fernando Valley Discussion Group | California tax update & Collection overview | Van Nuys |
| Jan 8 | CA Society of Tax Consultants | California tax update | Claremont |
| Jan 10 | IRS Seminar | California tax update | Torrance |
| Jan 10 | CA Certified Public Accountants | California tax update | Pasadena |
| Jan 11 | IRS Seminar | California tax update | Irvine |
| Jan 12 | CA Society of Tax Consultants | California tax update | Lakewood |
| Jan 12 | IRS Seminar | California tax update | San Diego |
| Jan 13 | IRS Seminar | California tax update | San Bernardino |
| Jan 14 | IRS Seminar | California tax update | Burbank |
| Jan 15 | IRS Seminar | California tax update | Goleta |
| Jan 25 | CA Society of Accounting & Tax Professionals | California tax update | Oakland |
| Jan 26 | USC Annual Tax Institute | California tax update & Collection overview | Los Angeles |
| Jan 26 | Society of CA Accountants | California tax update & Collection overview | Arcadia |
| | | | |
| February Events | | | |
| No events scheduled for February | | | |
| | | | |
| March Events | | | |
| Mar 16 | University of California, Berkeley | Tax workshop | Berkeley |
| | | | |

Inside FTB

Improving Taxpayer Access to Information

We continually strive to improve your access to taxpayer account information and provide answers to tax questions. Our self-service internet options such as “Access Your Account” provide specific account information at your convenience. Our interactive voice response phone system also provides recorded information.

For those occasions when it is necessary to talk to a phone agent about confidential account information, we have improved that experience for you. Many of our toll free call centers provide virtual hold technology, allowing callers the choice of receiving a call back from a call agent rather than waiting on hold. Since implementing virtual hold six months ago, we reduced the call wait time by almost 10 million minutes. 63 percent of callers took advantage of the virtual hold option. In addition, the virtual hold service provides a cost savings to the state by no longer paying for the “on hold” time for the callers who choose the virtual hold option.

New in 2011, we will launch a new pilot program, internet live chat. You will be able to communicate with a representative via the internet to get information about law, general filing assistance, navigation, and self service options on our website.

Reminder: Use New Fax Numbers

While the current fax numbers will remain active until January 31, 2011, we encourage you to use the new electronic service now. Beginning February 1, 2011, the old fax numbers will be decommissioned. If you inadvertently sent a fax to the old fax numbers during the filing season, we will notify you to use the new fax numbers.

Our new fax numbers and business areas are published in the [October Tax News](#).

Criminal Corner

Businessman Gets Prison for State Income Tax Fraud

A Los Angeles area man was sentenced to three years in state prison for income tax refund fraud.

Kessler “Corky” Wyatt, aka Corky Kessler, aka Erick Kessler, 70, was found guilty in October of 14 counts of state income tax fraud, two counts of negotiating fraudulent state income tax refund checks, and one count of grand theft.

According to court documents, Wyatt was a self-employed job placement recruiter who used his knowledge of payroll systems and recruiting skills to create the refund fraud scheme. During 1999 - 2002, Wyatt prepared and filed false wage and withholding statements. He then recruited others to file fraudulent state income tax returns resulting in fraudulent refunds. Wyatt spent most of the money on maintaining his lavish lifestyle.

Wyatt was also ordered to pay the state nearly \$200,000 in restitution. An FTB investigator discovered the scheme through a tip and conducted an investigation.

Los Angeles County Superior Court Judge Kathleen Kennedy handed down sentencing in Department 109 of the Clara Shortridge Foltz Criminal Justice Center. Los Angeles County Deputy District Attorney James Belna prosecuted the case.

Big Business

Correction to the Revised Texas Franchise Tax Notice

We determined that the following statement on page four of the FTB Notice 2009-06, relating to California treatment of the Revised Texas Franchise Tax, was in error:

Texas allows a corporation to make an election to be treated as an S corporation. Therefore to claim the OSTC for the RTFT, the taxpayer must be a shareholder of an S corporation that elected S corporation treatment in Texas.

Specifically, S corporation status is not a matter of state law in Texas; instead, all corporations are generally treated the same. Therefore, the language quoted above from FTB Notice 2009-06 is being replaced in the [FTB Notice 2010-02](#) with the following language:

Texas does not allow a corporation to make an election to be treated as an S corporation for state purposes. Therefore, a shareholder of a corporation that is an S corporation under Chapter 4.5 of Part 11 of the California Revenue and Taxation Code is generally allowed to treat his or her pro rata share of net income taxes (as defined under section 18001(b)) paid to Texas by the corporation as if those taxes had been paid by the shareholder.

As a result, [FTB Notice 2010-02](#) supersedes FTB Notice 2009-06, which is withdrawn.